



ARIZONA STATE SENATE
Fifty-Second Legislature, Second Regular Session

FACT SHEET FOR H.B. 2240

workers' compensation; modifications

Purpose

Entitles any party to one Administrative Law Judge (ALJ) change in a workers' compensation hearing. Adopts required conditions and rates for benefit interest payments. Prohibits a vexatious litigant from filing any new pleading, motion or other document.

Background

The Industrial Commission of Arizona (ICA) is charged with adjudication of workers' compensation claims (A.R.S. § 23-921). Any party may file a request for a claim hearing which the ICA refers to the ALJ division. The ICA must approve any final settlement agreement before the settlement it is valid and enforceable.

Administrative Law Judge Change

A party in a workers' compensation case may submit an affidavit requesting a change of ALJ on grounds that the ALJ: a) has been engaged as counsel in hearing before appointment; b) has an interest in the hearing; c) is kin or otherwise related to a party in the hearing; d) is a material witness in the hearing; or e) cannot deliver a fair and impartial hearing due to bias, prejudice or interest (A.R.S. § 23-941). H.B. 2240 entitles any party to an ALJ change as a matter of right. Rather than submitting a sworn affidavit, the requesting party may file a notice of change of ALJ containing certain required information.

Benefit Payments

The Arizona Workers Compensation Act does not stipulate whether interest may be awarded if benefit payments are delayed due to litigation. In August 2015, the Arizona Supreme Court held that interest is payable when a party fails to pay undisputed permanent disability benefits or when litigation delays payment of a death benefit claim (*Stenz v. Industrial Commission of Arizona*). H.B. 2240 codifies this Supreme Court holding. In current statute, loan or indebtedness interest is awarded *at the lesser of ten percent per annum or at a rate per annum that is equal to one percent plus the prime rate as published by the Board of Governors of the Federal Reserve System* (A.R.S. 44-1201). H.B. 2240 applies this standard to benefit interest payments.

Vexatious Litigants

Laws 2014, Chapter 41, Section 1 prescribes that in a noncriminal case, the presiding judge of the Superior Court or the judge's designee may declare a pro se litigant a vexatious litigant if certain conditions are met. A vexatious litigant cannot file a new pleading, motion or other document without prior leave of the court. Vexatious conduct includes: 1) repeated filing of court actions solely or primarily to harass; 2) unreasonably expanding or delaying court proceedings; 3) initiating or defending court actions without substantial justification; 4) engaging in abuse of discovery or conduct in discovery that has resulted in sanctions; 5) engaging in a pattern of making unreasonable, repetitive and excessive requests for information; and 6) repeated filing of documents or requests for relief that have been the subject of previous rulings by the court in the same litigation (A.R.S. § 12-3201). H.B. 2240 expands this authorization to the ALJ in workers' compensation cases.

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

Administrative Law Judge Change

1. Entitles any party in a workers' compensation hearing to file a notice of an ALJ change and receive the change as a matter of right.
2. Requires the notice of an ALJ change to include the:
 - a) signature of the party or the party's agent;
 - b) name of the ALJ to be changed;
 - c) certification of timely filing within 30 days of the hearing notice or ALJ change; and
 - d) confirmation that the interested party has not been previously granted an ALJ change.
3. Stipulates that the employer and the employer's insurance carrier, in a request for ALJ change, are considered a single party unless their interests conflict.
4. Prohibits in a hearing to request a new physician a request of ALJ change if delay will result in immediate and irreparable injury, loss or damage.

Benefit Payments

5. Requires interest on benefits to paid at the Board of Governors Federal Reserve rate plus 1 percent, not to exceed 10 percent, if and only if:
 - a) permanent partial disability benefits remain unpaid 10 days after the date the award or notice becomes final; or
 - b) a previously denied claim for dependent benefits is subsequently accepted, in which case interest accumulates from the date the claim was filed.
6. Eliminates, from wages considered to be earned for calculation of unemployment benefits, the addition of 50 percent of retirement and pension benefits received during the period of temporary partial disability.

Translation Services

7. Includes translation services in compensable medical, surgical and hospital benefits.
8. Allows a carrier, self-insurer or employer to choose a translator certified by an outside agency and not an employee of the carrier, self-insurer or employer.
9. Stipulates that parties may agree on a non-certified translator if a certified translator for the appropriate language cannot be located.

Vexatious Litigants

10. Allows on the motion of a party the ALJ or ALJ designee to deem a pro se litigant a vexatious litigant in a workers' compensation case.
11. Adopts 30-day limits for:
 - a) a pro se litigant to respond to the ALJ vexatious litigant designation; and
 - b) the ALJ to issue an order upon receipt of the pro se litigant's response.
12. Prohibits a vexatious litigant from filing any new pleading, motion or other document without prior leave of the ALJ.
13. Suspends a vexatious litigant designation if the pro se litigant is currently represented by legal counsel.
14. Designates, exclusively to the current claim, a pro se litigant as a vexatious litigant if the ALJ finds the pro se litigant engaged in vexatious conduct.
15. Defines *vexatious conduct* as:
 - a) repeatedly filing actions solely or primarily for the purpose of harassment;
 - b) unreasonably expanding or delaying ICA proceedings;
 - c) bringing or defending claims without substantial justification;
 - d) engaging in abuse of discovery or conduct in discovery that has resulted in the imposition of sanctions against the pro se litigant;
 - e) a pattern of making unreasonable, repetitive and excessive requests for information; or
 - f) repeatedly filing documents or requests for relief that have been the subject of previous rulings by the ICA in the same litigation.
16. Defines *without substantial justification* as a claim or defense that is groundless or not made in good faith.
17. Makes technical and conforming changes.
18. Becomes effective on the general effective date.

FACT SHEET

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House Action

INS	2/03/16	DPA	8-0-0-0
Third Read	2/18/16	DPA	57-1-2-0

Prepared by Senate Research

March 3, 2016

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